No. 10 ORIGINAL

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In the Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES OF AMERICA

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA AND FLORIDA

PETITION FOR REHEARING BY THE STATE OF LOUISIANA

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Defendant, the State of Louisiana, presents its petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

GROUNDS FOR REHEARING

I.

Louisiana contends that its Act of Admission gives it a defined boundary of three (3) leagues from coast, but if the Act of Admission is considered ambiguous it was error not to hold that a fair interpretation requires the holding that Louisiana had a water boundary three (3) leagues from coast, because:

a) all riparian states had territorial waters;

b) the United States acquired by the purchase of Louisiana all territorial waters off its coast theretofore claimed by France and by Spain, which were customarily fixed at three (3) leagues;

c) all of the southern part of the territory known as Louisiana became a part of the State of Louisiana, "with all its rights and appurtenances," including LaSalle's claim to "the seas, ports, bays and adjacent straits."

The Court erred in holding that the language of Louisiana's Act of Admission contemplated no territorial sea whatever (Op. p. 64) in view of the fact that this Court itself in *Louisiana v. Mississippi*, 202 U.S. 1, 43, specifically recognized a water boundary for the State of Louisiana. The Court did not have to determine in that case the full extent of such territorial waters but the controversy itself was solely because both states claimed territorial waters which this Court found them to have.

II.

The measure in this territorial sea used by Congress in admitting the Gulf Coast States to the Union was three leagues in the case of Louisiana, six leagues in the case of Mississippi and Alabama, and the Act of Admission of Florida and the Act of Annexation of Texas were silent on this point and the Court erred in holding that there was no territorial sea within the boundary of Louisiana, Mississippi and Alabama when those states were admitted into the Union.

III.

The Court was in error in considering that the measurement of six leagues from shore in the Acts of Admission of Mississippi and Alabama contravenes or is in conflict with Louisiana claims for, on the

contrary, the use of that measurement shows only that the United States consistently claimed all that any of its predecessors had claimed; and as England had claimed six leagues for East and West Florida during its ownership thereof so did the United States as to this area; and as Spain had claimed three (3) leagues, so did the United States, first for Louisiana, and then for Texas.

IV.

The Court correctly cited Secretary McKay (Op. p. 24, footnote 44) to show that Congress recognized that Spain and France claimed a marginal belt as part of the Louisiana territory and that we must resort to ancient documents to determine historic boundaries, and the Court correctly applied this as to Texas but erred in failing to apply this test to Louisiana, Mississippi and Alabama.

The Court's decision states that the claim of Texas to three (3) leagues originated from the fact that Spain claimed three (3) leagues in the Gulf of Mexico, which is correct, but the Court gave no effect to the fact that Louisiana was a Spanish territory from 1763 to 1803, the forty-year period immediately preceding the Louisiana Purchase. The United States acquired through Spain and France by its purchase of Louisiana claims as extensive as the Republic of Texas had as the successor to Spain and the Court erred in holding otherwise.

From the beginning the United States and Spain fixed their corner West of the Mississippi "On the

Gulph of Mexico at the mouth of the river Sabine *in the sea*," 6 Stat. 252. The boundary "*in the sea*" on the basis of Spanish custom, extended three (3) leagues in the sea. (Op. pp. 25, 28). The Texas boundary, based upon the common United States and Spanish boundary, having been determined to be three (3) leagues from the coast, the Louisiana boundary is necessarily there also, and the Court was in error in not so holding.

V.

The Court discussed the Treaty of Guadalupe Hidalgo between the United States and Mexico in 1848 and concluded that "what the line, denominated a 'boundary' in the Treaty itself, separates is territory of the restrictive [respective] countries." (Op. p. 58). This was held to be the establishment of a three (3) league water boundary for the United States at the western end of Texas and a recognition of a three (3) league water boundary for Texas. Therefore when the United States established a boundary with Spain at the mouth of the Sabine *in the sea*, this was necessarily the recognition of a water boundary for the United States at the western end of Louisiana and a water boundary for Louisiana. The only available measurement is three (3) leagues for Louisiana and the other Gulf Coast States.

VI.

The majority opinion states that the Treaties of Gaudalupe Hidalgo, the Gadsden Purchase, and subsequent conventions and treaties separated the terri-

tories of Mexico and the United States, and established a maritime boundary three (3) leagues into the Gulf of Mexico, thereby recognizing the maritime boundary of Texas and of the United States that distance from coast (Op. pp. 57, 58). If this had the effect of limiting the six leagues included in the Acts of Admission of Alabama and Mississippi it did not have the effect of reducing either of them or Louisiana beyond the measure of three (3) leagues. This national maritime boundary was again used in 1868 by the State of Florida which the Court has said was recognized by Congress. It is illogical and unrealistic to conclude that there is a three (3) league national boundary for the Republic of Mexico, the State of Texas and the State of Florida but that the vitally important though relatively small portion lying seaward of the coasts of Louisiana, Mississippi and Alabama has and has had a three mile boundary. As the United States has admitted and this Court has held that the national boundary and state boundaries are co-extensive or can be made so by the States, the states are entitled to the national three (3) league boundary.

VII.

The Court erred in holding that the Submerged Lands Act makes the rights of states beyond three (3) miles turn on the existence of an expressly defined state boundary beyond three (3) miles (Op. p. 20). Congress was aware of the language used in the Acts of Admission of Louisiana, Mississippi, Alabama

and Florida and the Act of Annexation and laws of Texas. If the Congress had intended the decision to turn on expressly defined boundaries, it would have said so. The Court states that the Submerged Lands Act does not contain any formula to be followed in the judicial ascertainment of state boundaries and that they must be fixed by historical events (Op. p. 29). The Court did this as regards Texas but erred in failing to do as to Louisiana, Mississippi and Alabama.

VIII.

The Court held in *United States v. California*, 332 U.S. 19, that the coastal states did not own or have title to the submerged lands off their coasts; the Submerged Lands Act, 67 Stat. 29, does not require the State of Louisiana to prove an expressly defined boundary as of 1812 or at any other time prior to May 22, 1953. It only contemplates that a fair understanding of the applicable criteria show for Louisiana a water boundary three (3) leagues from coast at the time of its admission to the Union or as recognized by Congress prior to May 22, 1953, and the Court erred in failing to so apply the Act.

IX.

The purpose of the Submerged Lands Act, as stated repeatedly in its legislative history, was to restore to the states the rights and powers exercised and possessed by them in their submerged lands and marginal seas prior to the decision of this Court in the California case, and to do so on principles of equity and

fairness to all states, which principles would recognize claims based on long continued possession by the states and acquiescence therein by the United States. The Court therefore erred in failing to apply principles of equity to the claims of Louisiana in determining the meaning of its Act of Admission, and in determining the extent of its equitable title based upon long continued possession and recognition. The Court has also erred in stating that Louisiana has abandoned its equitable pleas of estoppel and prescription (Op. p. 74).

X.

Under the Submerged Lands Act, Louisiana is entitled to three (3) leagues as that was its boundary at the time the State became a member of the Union. If this were not so, Louisiana is nevertheless entitled to three (3) leagues by showing that Congress recognized such a boundary prior to the Submerged Lands Act, either expressly or by implication. The Court found approval by implication sufficient for Florida. Louisiana is entitled to the same consideration. Treaties made by the United States with Spain, Mexico and the Republic of Texas relative to the national seaward boundary in the Gulf recognized and approved by necessary implication a three (3) league seaward boundary for all Gulf Coast States.

XI.

The Court faced with the problem of finding a measurement of the marginal sea off the coast of Louisiana should necessarily have concluded that three

(3) leagues was the proper measurement for the reasons that, (a) the State of Louisiana in its Act of Admission was declared to have all of the area within the limits there set; (b) the only reference to measurement within the Act of Admission itself is three (3) leagues; and (c) the Government of the United States through Congress and through the Executive Branch, specifically and definitely recognized this three (3) leagues measurement establishing the boundary between the United States and the Republic of Texas in 1838 and the international boundary between Mexico and the United States in 1848.

XII.

The Court further erred in its failure to afford all of the Gulf Coast States a parity of treatment in determining their seaward boundaries in accordance with equitable considerations and in accordance with the express purpose of the Submerged Lands Act.

CONCLUSION

For the foregoing reasons, it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, the decision of this Court be reversed and that this Court hold that Louisiana is entitled to the lands, minerals and other natural resources underlying the Gulf of Mexico to a distance of three (3) leagues from Louisiana's coast.

This petition is accompanied by a joint brief of

the States of Louisiana, Mississippi and Alabama in support of their petitions.

Respectfully submitted,

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Of Counsel

CERTIFICATE

I, Jack P. F. Gremillion, one of the attorneys for the State of Louisiana, defendant herein, and a member of the bar of the Supreme Court of the United States, certify that the foregoing petition for rehearing is filed in good faith and not for delay.

JUNE 23, 1960.

Jack P. F. Gremillion

COPY PRINTE

PROOF OF SERVICE

I, Jack P. F. Gremillion, Attorney General of the State of Louisiana, one of the attorneys for said state, a defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that I have served the required number of copies of the foregoing Petition for Rehearing by the State of Louisiana, by mailing said copies to the Attorney General and Solicitor General of the United States, addressed to them at their offices in the Department of Justice Building, Washington, D. C. Said copies have been sent, via Air Mail, postage prepaid, on June 23, 1960.

Jack P. F. Gremillion

OF COUNSEL

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